(4)

No. 04-514

In The Supreme Court of the United States

RICKY BELL, WARDEN,

Petitioner,

v.

GREGORY THOMPSON,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX

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Petition For Certiorari Filed October 14, 2004
Certiorari Granted January 7, 2005

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RELEVANT DOCKET ENTRIES

U.S. District Court
Eastern District of Tennessee (Winchester)
CIVIL DOCKET FOR CASE #: 4:98-cv-00006

06/12/1998	7	PETITION FOR WRIT OF HABEAS CORPUS 28 USC 2254 by petitioner Gregory Thompson (AR) (Entered: 06/16/1998

* * *

02/17/2000	124	MEMORANDUM by Honorable R. Allan Edgar that the respondent's motion for sum judg will be granted as to all claims, and Thompson's petition and amended petition for writ of habeas corpus pursuant to 28 U.S.C. Sec. 2254 (3 & 17) will be dismissed; Thompson is not entitled to an evidentiary hearing. (cc: all counsel) (AR) (Entered: 02/17/2000)
02/17/2000	125	ORDER by Honorable R. Allan Edgar GRANTING res's motion for sum judg (7); DISMISSING petition (3) for a writ of habeas corpus pursuant to 28 U.S.C. Sec. 2254; CERTIFYING that any appeal would be frivolous; DENYING pet leave to proceed ifp on appeal; DENYING any application for a certificate of appeal-ability since pet has failed to make a substantial showing of the denial of a constitutional right; and that the STAY WILL REMAIN IN EFFECT pending any appeal; dismissing case. Ent'd as a Judgment, OB 29, pg 8 (cc: all counsel) (AR) (Entered: 02/17/2000)

* * *

04/21/2000 129 NOTICE OF APPEAL by petitioner Gregory Thompson from Dist. Court decision [128-1], [125-2] (cc: all counsel) (AR) (Entered: 04/21/2000)

* * *

03/02/2001 133 MOTION by petitioner Gregory Thompson under Fed.R.Civ.Pro. Rule 60(b) for relief from final order for purpose of supplementing the record. C/S (AR) (Entered: 03/02/2001)

03/07/2001 134 ORDER by Honorable R. Allan Edgar dismissing petitioner's motion [133-1] as TIME-BARRED. Winchester OB 30, pg 8; Chattanooga OB 87, pg 115 (cc: all counsel) (AR) Modified on 03/08/2001 (Entered: 03/07/2001)

* * *

03/14/2001 137 MOTION by petitioner Gregory Thompson to reconsider order denying petitioner's Rule 60(b) motion (See CF #134 C/S (AWH) (Entered: 03/14/2001

* * *

04/17/2001 139 MEMORANDUM AND ORDER by Honorable R. Allan Edgar denying Petitioner Thompson's motion to reconsider [137-1] (cc: all counsel) (AR) (Entered: 04/17/2001)

* * *

01/13/2003 143 INFORMATIONAL COPY of USCA OPINION AFFIRMING the judgment of the district court denying Thompson's petition for writ of habeas corpus; 6CA # 00-5516. (AR) (Entered: 01/13/2003)

01/13/2003 144 JUDGMENT from USCA AFFIRMING the judgment of the district court; 6CA #00-5516. (AR) (Entered: 01/13/2003)

* * *

12/15/2003 147 Copy of LETTER from U.S. Supreme Court to 6CA that an Order was entered 12/1/03 denying the petition for a writ of certiorari (AR) (Entered: 12/15/2003)

01/29/2004 148 Copy of LETTER from U.S. Supreme Court dated 1/20/04 to U.S. Court of Appeals, Sixth Circuit, that an Order entered denying the petition for rehearing, Supreme Court # 03-5759, 6CA # 00-5516 (AR) (Entered: 01/29/2004)

* * *

General Docket

US Court of Appeals for the Sixth Circuit

Docket # 00-5516

4/24/00 Death Penalty Case Docketed, with certificate of appealability denied. Notice filed by Appellant Gregory Thompson. Transcript needed: y ☐ (yh)

* * *

9/12/00 ORDER filed granting motion to grant certificate of appealability [2158722-1] filed by Stephen M. Kissinger [00-5516]. Entered by order of the court. (yh)

* * *

11/20/00 PROOF BRIEF filed by Dana C. Hansen for Appellant Gregory Thompson. Certificate of service date 11/16/00 Number of Pages: 70. [00-5516] ☐ (lak)

* * *

2/16/01 PROOF BRIEF filed by Jennifer L. Smith for Appellee Ricky Bell. Certificate of service date 2/15/01. Number of Pages: 80. [00-5516] ☐ (lak)

* * *

3/2/01 Appellant MOTION filed to hold case in abeyance pending appellant's contemporaneous 60(b) motion in the district court. Motion filed by Dana C. Hansen for Appellant Gregory Thompson. Certificate of service date 3/1/01 [00-5516] (yh)

* * *

3/8/01 Copy of District Court Order filed dismissing as time barred, the petitioner's motion to alter or amend judgment pursuant to F.R.C.P. 60(b). [00-5516] (yh)

3/9/01 APPENDIX filed by Dana C. Hansen for Appellant Gregory Thompson. Copies: 5. Certificate of service date 3/8/01 [00-5516] (lak)

3/12/01 PROOF REPLY BRIEF field by Dana C. Hansen for Appellant Gregory Thompson Certificate of service date 3/9/01 [00-5516] (lak)

* * *

3/20/01 FINAL BRIEF filed by Dana C. Hansen for Appellant Gregory Thompson. Copies: 7. Certificate of service date 3/19/01 Number of Pages: 70. [00-5516] (lak)

3/21/01 ORDER filed denying motion to hold case in abeyance pending district court ruling on 60(b) motion filed by Dana C. Hansen [00-5516]. Entered by order of the court. (yh)

3/21/01 FINAL BRIEF filed by Jennifer L. Smith for Appellee Ricky Bell. Copies: 7. Certificate of service date 3/20/01. Number of Pages: 82. [00-5516] (lak)

* * *

3/26/01 FINAL REPLY BRIEF filed by Dana C. Hansen for Appellant Gregory Thompson. Copies: 7 Certificate of service date 3/19/01 Number of Pages: 43. [00-5516] (lak)

* * *

11/1/01 CAUSE ARGUED on 11/1/01 by Dana C. Hansen for Appellant Gregory Thompson, Jennifer L. Smith for Appellee Ricky Bell before Judges Suhrheinrich, Moore, Clay. [00-5516] (me)

* * *

4/10/02 CERTIFIED RECORD filed with certificate of appealability denied. Volumes include 30 Tr; 3 Ex; 5 Pl. [00-5516] (laj)

7/3/02 Appellant ex parte MOTION filed to expand appointment of counsel to include state court proceedings. Motion filed by Dana C. Hansen for Appellant Gregory Thompson. Certificate of service date [00-5516] (yh)

* * *

7/26/02 ORDER filed granting motion to expand appointment of counsel to include state court proceedings. [2580695-1] filed by Dana C. Hansen [00-5516]. Entered by order of the court. (yh)

1/9/03 OPINION filed: AFFIRMED, decision for publication pursuant to local rule 206 [00-5516]. Richard F. Suhrheinrich, Authoring Judge, Karen N. Moore, Eric L. Clay, Circuit Judges. Moore, J. concurring, Clay, J. dissents. (yh)

1/9/03 JUDGMENT FILED: AFFIRMED. (yh)

* * *

1/27/03 PETITION for en banc rehearing filed by Dana C. Hansen for Appellant Gregory Thompson. Certificate of service date 1/22/03. [00-5516] (blh)

3/10/03 ORDER filed denying petition for en banc rehearing [2683674-1] filed by Dana C. Hansen [00-5516]. Richard F. Suhrheinrich, Karen N. Moore, Eric L. Clay, Circuit Judges. (blh)

3/14/03 Appellant MOTION filed to stay mandate pending petition for writ of certiorari. Motion filed by Dana C. Hansen for Appellant Gregory Thompson. Certificate of service date 3/13/03 [00-5516] (yh)

3/24/03 ORDER filed granting motion to stay mandate [2709681-1] filed by Dana C. Hansen [00-5516]. Richard F. Suhrheinrich, Karen N. Moore, Eric L. Clay, Circuit Judges (yh)

4/3/03 CERTIFIED RECORD RETURNED to lower court at the end of appellate proceedings. [00-5516]. Volumes included: 5 Pl; 31 Tr; 3 Ex. (laj)

* * *

6/11/03 U.S. Supreme Court letter filed: extension of time within which to file a petition for a writ of certiorari granted to and including 08-07-03 [2760764-1]. [00-5516] (swh)

8/15/03 U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant Gregory Thompson. Filed in the Supreme Court on 08-11-03. Supreme Ct. case number: 03-5759 [00-5516] (swh)

8/21/03 Appellee MOTION filed to reconsider order dated 7/26/02 granting ex parte motion for authorization to expand appointment of counsel to include state court proceedings. Motion filed by Jennifer L. Smith for Appellee Ricky Bell. Certificate of service date 8/19/03. [00-5516] (yh)

8/28/03 Appellant RESPONSE in opposition to the motion to reconsider appointment order previously filed by Jennifer L. Smith. Response from Dana C. Hansen for Appellant Gregory Thompson. Certificate of service date 8/27/03. [00-5516] (yh)

9/19/03 CERTIFIED RECORD filed with certificate of appealability denied. Volumes include 30 Tr

(Vol. 3-30 are state court record); 3 Ex (Vol. 1 = 3 video tapes); 5 Pl. [00-5516] (laj)

12/2/03 Appellant MOTION filed to further stay mandate. Motion filed by Dana C. Hansen for Appellant Gregory Thompson. Certificate of service date 12/1/03 [00-5516] (yh)

12/8/03 U.S. Supreme Court letter filed denying petition for writ of certiorari [2799099-1] filed by Gregory Thompson [00-5516] Supreme Court No. 03-5759. Filed in the Supreme Court on 12-01-03. (swh)

12/12/03 ORDER filed granting motion to continue stay of mandate [2860508-1] filed by Dana C. Hansen [00-5516]. Richard F. Suhrheinrich, Karen N. Moore, Eric L. Clay, Circuit Judges. (yh)

1/23/04 U.S. Supreme Court letter filed: petition for rehearing denied [2889074-1]. Filed in the Supreme Court on 01-20-03. Supreme Court No. 03-5759 (swh)

6/23/04 OPINION filed: The judgment of the district court is VACATED and the case is REMANDED for further proceedings not inconsistent with the opinion of this Court. It is FURTHER ORDERED that the execution of petitioner Gregory Thompson is STAYED for 180 days in order to permit the district court to proceed. Richard F. Suhrheinrich, Circuit Judge, Karen N. Moore, Authoring Judge, Eric L. Clay, Circuit Judge. Suhrheinrich, J. concurring part, dissenting in part. (yh)

6/23/04 JUDGMENT FILED: VACATED and remanded. (yh)

* * *

7/1/04 Appellee MOTION filed to stay mandate pending the filing of a petition for writ of certiorari. Motion filed by Angele M. Gregory for Appellee Ricky Bell. Certificate of service date 6/30/04. [00-5516] (yh)

7/21/04 ORDER filed granting motion to stay mandate for 90 days pending filing for cert at the Supreme Court. The Stay of Execution remains. Richard F. Suhrheinrich, Karen N. Moore, Eric L. Clay, Circuit Judges. (yh)

9/22/04 Appellee MOTION filed to further stay mandate. Motion filed by Jennifer L. Smith for Appellee Ricky Bell. Certificate of service date 9/21/04. [00-5516] (yh)

* * *

9/28/04 ORDER filed granting motion to further stay mandate [3027804-1] filed by Jennifer L. Smith [00-5516]. Richard F. Suhrheinrich, Karen N. Moore, Eric L. Clay, Circuit Judges. (yh)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
at WINCHESTER

GREGORY THOMPSON, Petitioner,	)	
v.	)	Case No. 4:98-cv-00006
RICKY BELL, Warden, Respondent.	)	Judge Edgar

The following Psychological Report was attached as Exhibit A to the Motion Under Fed. R. Civ. Pro. Rule 60(b) (Docket Entry No. 133), filed in the above court.

UNIVERSITY PSYCHOLOGICAL ASSOCIATES, P.A.
8430 University Executive Park, Suite 690
Charlotte, North Carolina 28262
(704) 547-1483/Fax (704) 547-0052

[Names Omitted In Printing]

PSYCHOLOGICAL REPORT
CLIENT: GREGORY THOMPSON
DATE OF BIRTH: 12-13-61
DATE OF REPORT: 7-22-99

Location of Examination:
Riverbend Maximum Security Institution (RMSI)
Nashville, Tennessee
Education of Client: 13 years
Occupation of Client: Death Row Inmate

REFERRAL QUESTIONS:

Mr. Gregory Thompson was referred for psychological evaluation in July, 1998 by attorney Mr. Stephen M. Kissinger of the Federal Defender Services of Eastern Tennessee Incorporated. Mr. Thompson was convicted of murder in 1985. This evaluation was requested to address the following questions:

1. Mr. Thompson's current psychological status
2. Mr. Thompson's likely psychological status and mental state before and surrounding the time of the 1985 offense.
3. Social, environmental, psychological, and economic factors in the life of Mr. Thompson which might have be [sic] considered to be mitigating in nature at the time of his trial.

PROCEDURE:

Psychological evaluation of Mr. Thompson was initiated on August 20, 1998. This first evaluation session extended over a period of approximately four hours and consisted of clinical interview and the administration of the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). Some review of prior psychological evaluation records was conducted to establish what formal psychological and neuropsychological testing had been administered to Mr. Thompson. Levels of current intellectual and neuropsychological functioning had been recently assessed by neuropsychologist, Barry Crown, Ph.D., so no attempt was made to replicate this type of assessment.

Following the 8-20-98 initial evaluation session, a very extensive review of legal, military, medical, prison and psychiatric/psychological records was initiated. A list of the documents examined is attached to this report.

It was intended that additional clinical observations of Mr. Thompson would continue to be made as part of this evaluation process. A return visit to RMSI was scheduled to occur in early 1999. By January 1999 Mr. Thompson's psychological condition had deteriorated to such a severe extent that observations relevant to the original referral questions became impossible. Mr. Thompson's lawyers now had questions concerning Mr. Thompson's competence to participate in *Habeas Corpus* proceedings. Two further interviews were conducted with Mr. Thompson for this limited purpose, on 2-2-99 and 4-7-99, totaling approximately six hours of additional observation. Voluminous Tennessee Department of Corrections mental health, medical, and administrative records were reviewed at this time as well.

As a consequence of this interruption in the evaluation procedure, the psychological evaluation which was initiated for the purposes described in the **REFERRAL QUESTIONS** section of this report is, as yet, incomplete. Further interviews with Mr. Thompson will be conducted at a late [sic] time. Nevertheless, the extensive record review conducted, the ten hours of clinical observations made of Mr. Thompson during the preceding eleven months, the interviews conducted with collateral informants, and the recent and past psychological testing which had been administered provide enough data to make it possible to render professional opinions about Mr. Thompson's mental state at and around the time of the 1985 offense.

CLINICAL OBSERVATIONS:

Mr. Gregory Thompson was cooperative with the assessment procedure. He answered all questions posed to him and appeared to be alert, watchful and interested in the interview process. His speech was sometimes tangential and rambling. Although motor behavior appeared controlled there was a manic quality to his verbalizations. Mr. Thompson was oriented as to person, place and time, but he repeatedly expressed his firm belief that he had written each and every song which played on the radio.

Mr. Thompson displayed symptoms of psychosis during the two subsequent meetings. The details of these sessions will not be reviewed here.

FORMAL PSYCHOLOGICAL TESTING:

The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) was administered to Mr. Thompson on 8-20-98. It had been determined in other examination

settings that Mr. Thompson's level of reading competence exceeded the necessary level of 8th grade ability required for proper administration of this test.

The MMPI-2 profile produced by Mr. Thompson is considered valid and appropriate for interpretation. Individuals producing similar profiles are described as experiencing significant psychological difficulties and chronic psychological maladjustment. Such individuals are considered to be highly suspicious of others, often displaying paranoid features. There is indication in this profile of the presence of a thought disorder and the inability to manage emotions. The world is perceived as a threatening and dangerous place and fears are viewed as externally generated and reality-based rather than as a product of an internally generated state. The behavior of such individuals is often described as hostile, aggressive, and rebellious against authority. Poor impulse control, lack of trust in others, and low frustration tolerance may result in such individuals displaying rage in interpersonal relationships.

Individuals producing this testing profile are also described as experiencing depressed mood. There is the strong possibility that such individuals have contemplated suicide and report preoccupation with feeling guilty and unworthy. Testing items were endorsed which suggest memory and concentration problems, and an inability to make decisions.

RELEVANT PSYCHOLOGICAL/PSYCHIATRIC DATA CONTAINED IN RECORDS:

The [sic] is substantial documentation throughout the Tennessee Department of Corrections records that Mr. Greg Thompson has suffered from significant mental illness since at least the time of hi [sic] his incarceration in 1985. He has been treated almost continuously

with some combination of major tranquilizer and/or anti-depressant and/or anti-anxiety medications. He has received a variety of diagnostic labels including Psychosis, Psychosis Not Otherwise Specified, Paranoid Schizophrenia, Mania, Mixed Substance Abuse, Schizophrenia, BiPolar Affective Disorder, Schizoaffective Disorder, Malingering, and Adult Antisocial Behavior. This is clearly indicative of the Tennessee DOC mental health staff's view that Mr. Thompson has experienced major mental illness throughout at least most of his period of incarceration. Further, there is extensive documentation contained in these records of many episodes of bizarre aggressive and/or self-destructive behavior.

INTERVIEWS WITH COLLATERAL WITNESSES:

Five individuals were interviewed (either by telephone or face-to-face) who provided significant supplemental information about the life circumstances and past/present psychological functioning of Mr. Gregory Thompson.

Ms. Maybelle Lamar

Ms. Lamar is Mr. Thompson's maternal grandmother. She was interviewed by telephone on July 21, 1999. Ms. Lamar assumed total responsibility for the care and rearing of Mr. Thompson and his two older siblings after his mother was killed when Mr. Thompson was approximately five years old. Mr. Thompson remained in her home until he entered the military as a young adult.

Ms. Lamar recalls the period following her daughter's fatal automobile accident as one of tremendous strain and disruption for her. She was unable to describe the reaction of the three young children to their mother's death because she "took to my bed" for approximately five or six

weeks following the accident. Ms. Lamar was unable to attend to these children in any way at that time. She did not recall how they obtained food or clothing, or whether they were in any distress. Ms. Lamar reported that she was drinking alcohol quite heavily during this period and that she left her bed to resume household activities only because the children contracted a serious medical illness.

Ms. Lamar described Mr. Thompson as displaying significantly "different" behavior when he returned to visit her following his discharge from the U.S. Navy. "Greg didn't act the same". Unlike the 'eager to please', passive, sometimes funny, gentle boy who she had reared, Mr. Thompson was "angry", "sometimes sad". "I don't think he wanted me to know what was going on with him. He mostly just stayed away from me." Ms. Lamar reported that she noticed Mr. Thompson sometimes "staring off into space" or "talking to himself". She would ask him about these behaviors. "He'd deny it. He acted like he didn't know what I was talking about." Ms. Lamar recalls being quite concerned about her grandson's mental state during this time. She did not recall ever being asked these questions at any time before or during Mr. Thompson's trial.

Ms. Nora Jean Hall Wharton

Nora Jean Wharton is Mr. Thompson's older sister. A lengthy telephone interview was conducted with her on July 21, 1999. She grew up in the same home as Mr. Thompson and had continuous contact with him throughout his childhood. Mr. Thompson lived briefly in the home of his sister following his discharge from the military.

Ms. Wharton described Mr. Greg Thompson as a highly sensitive, passive, timid, emotionally vulnerable child. She

described a childhood of great hardship. According to her report, their grandmother, Ms. Maybelle Lamar was verbally abusive, neglectful of the children's basic daily needs, highly critical, and unable to care properly for the children. Ms. Wharton described many instances of such abuse and neglect. She described the period following their mother's death as particularly chaotic and neglectful, recalling that often there was no food in the home and that the children would take money from under their grandmother's mattress to go and buy food. In the period following their mother's death, Ms. Wharton reported that her grandmother was continuously drunk and unable to care for her grandchildren. According to Ms. Wharton, Greg Thompson frequently witnessed his sister Nora being beaten by their grandmother.

Ms. Wharton further recalled that she and her younger brother had witnessed the brutal beating and rape of their mother by their biological father. She recalls Greg standing in the scene screaming and sobbing uncontrollably.

Ms. Wharton reported that Greg would frequently cry at school during the early school years, and, as a result, was often the victim of intense mockery from his classmates. Because Ms. Wharton was in the same classroom as her brother she observed these behaviors and often intervened on her brother's behalf. She described Mr. Thompson's response to this abuse as quite passive.

Of particular significance is Ms. Wharton's recollections about Mr. Thompson repeatedly banging his head against the wall of their home on many occasions during their early childhood. This behavior frequently followed their grandmother yelling at Greg "You have the Devil in you." Mr. Thompson would tell his sister that he was attempting

to "knock the Devil out" of his head in this way. Ms. Wharton recalls believing that this behavior was quite odd.

Following his discharge from military service, Ms. Wharton described Mr. Thompson's behavior as significantly different than his prior conduct and attitude. She reported several episodes of bizarre behavior which included a sudden intense emotional reaction without obvious external provocation. Mr. Thompson would become extremely angry, would cry and scream for a lenthy [sic] period of time, would appear as if he might or actually become quite physically violent or aggressive, and then would suddenly retreat. Ms. Thompson reported this behavior and her concerns about it to her grandmother. Ms. Lamar suggested that Ms. Wharton take her brother to the psychiatric unit of the local hospital for treatment. Ms. Wharton did not attempt to get any treatment for Mr. Thompson and reports feeling quite guilty about this.

Nora Jean Wharton described her own struggles with mental illness throughout the past fifteen years. She has received counseling to assist her in coping with the effects of her abusive childhood and she has been treated with a combination of a major tranquilizer (Stellazine) and antidepressant medications. She reported that her younger half-sister Kim has also suffered from significant mental illness.

CUSTODY OFFICERS AT RMSI

Following the second interview conducted with Mr. Thompson on 2-2-99, I informally interviewed two custody officers who escorted Mr. Thompson back to his cell. These officers have not as yet been identified by name. Both

reported that they were aware that Mr. Thompson was quite mentally ill and that they were concerned about him. They further reported that they believed it would be in his best interest to be housed in a prison facility better equipped to deal with individuals experiencing severe mental illness.

MICHAEL CHAVIS

Federal Defender Services of Eastern Tennessee investigator, Mr. Michael Chavis, was interviewed about his July 29 through August 2, 1998 interview with Ms. Arlene Cajulao in Honolulu, Hawaii. Ms. Cajulao and Mr. Thompson had an intimate relationship and lived together for approximately four years, from 1980 to 1984.

Mr. Chavis reported that Ms. Cajulao described Mr. Thompson as displaying increasingly bizarre behavior during the latter part of their relationship. Similar to descriptions proved [sic] by Ms. Nora Wharton, Ms. Cajulao reported several episodes of "paranoid" and aggressive behavior which had no apparent external antecedent. She reported that Mr. Thompson sometimes thought that people were "after" him. He would close all the curtains in the house because he did not want the person who was "looking" for him to see him through the curtains. She remembers being quite concerned about Mr. Thompson's mental state.

SUMMARY AND CONCLUSIONS:

Mr. Gregory Thompson has experienced symptoms of major mental illness throughout his adult life. Indeed, there is information available which suggests that Mr. Thompson was displaying significant signs of mental illness from the time he was a small child. Self-injurious

behavior is reported as early as six years old. There is extensive documentation contained within the records reviewed for this evaluation that Mr. Thompson has experienced a thought disorder and/or an affective disorder of some type for many years.

It is my opinion that Mr. Gregory Thompson is most appropriately diagnosed, according to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, as having Schizoaffective Disorder, Bipolar Type. As is typical of this illness, symptoms became apparent in early adulthood. Mr. Thompson was suffering serious mental illness at the time of the 1985 offense for which he has been convicted and sentenced. This mental illness would have substantially impaired Mr. Thompson's ability to conform his conduct to the requirements of the law.

Further, Mr. Thompson was the victim of severe childhood emotional abuse and physical neglect. His family background is best described as highly neglectful and economically deprived. Mr. Thompson repeatedly witnessed episodes of violence during his childhood in which one family member assaulted or brutalized another. There are significant aspects of Mr. Thompson's social history that have been recognized as mitigating in other capital cases.

It is important to note that all of the information related to Mr. Thompson's early mental illness and social history was available at the time of his 1985 trial.

/s/ Faye E. Sultan
Faye E. Sultan, Ph.D.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

GREGORY THOMPSON, Petitioner, v. RICKY BELL, WARDEN Respondent.	:	Case No. 4:98-CV-6

DEPOSITION OF FAYE E. SULTAN, PH. D.
(Taken by the Respondent)
Charlotte, North Carolina
July 22, 1999

Reported by: Dayna H. Lowe
Court Reporter
Notary Public

[2] **APPEARANCES**

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Deposition of **FAY E. SULTAN, PH.D.**, taken by the Respondent, at the Mecklenburg County District Attorney's Office, 700 East Trade Street, Charlotte, North Carolina, on the 22nd day of July, 1999, at 1:01 p.m., before Dayna H. Lowe, Court Reporter and Notary Public.

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PROCEEDINGS

Whereupon,

FAYE E. SULTAN, PH.D.,

having been duly sworn,

was examined and testified as follows:

EXAMINATION BY COUNSEL FOR RESPONDENT

BY MR. PRUDEN:

Q. Would you please state your name for the record.

A. Faye Ellen Sultan.

Q. And what is your profession?

A. I am a clinical psychologist.

Q. Dr. Sultan, where is your practice located?

A. My practice is located right here in Charlotte, [4] North Carolina.

Q. And are you a sole practitioner in your practice, or are you in partnership of some sort with others?

A. In the last several years, we actually have operated in partnership. I retain the directorship of the practice. It's called University Psychological Associates. I was, for many years, the sole proprietor of that practice. I'm

now a shareholder. And there are a total of nine psychologists and social workers practicing together.

Q. Are there any psychiatrists as part of your practice?

A. No, not at this time. There are not.

Q. You're appearing today pursuant to a subpoena that we served on you?

A. Yes, I am.

MR. PRUDEN: I'd like to make the subpoena Exhibit 1, please.

(Exhibit No. 1 was marked for identification.)

BY MR. PRUDEN:

Q. Do you happen to have a CV?

A. I do. It's part of the package that you've just been given.

Q. Oh, okay. Great. This will simplify things. [5] Dr. Sultan, just to make sure that I've got it straight, is this a copy of your curriculum vitae?

A. It is.

MR. PRUDEN: I would like to make that Exhibit 2 to this deposition, and, with your permission, after you mark it, I'd like to just keep it over here by me for reference.

MR. KISSINGER: No objection.

(Exhibit No. 2 was marked for identification.)

MR. PRUDEN: Off the record for a moment.

(Off-the-record discussion.)

BY MR. PRUDEN:

Q. Now I assume it will tell me somewhere on your CV where you are licensed?

A. I'm licensed in North Carolina.

Q. And only North Carolina, correct?

A. That's correct.

Q. I notice the date on your CV is 19 October 1996.

A. Yes, it is.

Q. Is it correct in all aspects, or are there any additions or deletions that need to be made to it?

A. There are no deletions I don't believe. There are some additions.

Q. Okay.

[6] A. Let me just be sure there are no deletions. No, I think everything stands as is.

In addition, in the last several years there are some presentations. That would be the nature of the additions. I gave a workshop track at the National Conference for Women and Addictions that was held in North Carolina, a national symposium addressing women's and addictions issues and the legal factors that ought to be considered. I did that track. I gave a lecture to the North Carolina Counselors' Association meeting about a year ago.

Q. And the nature of that?

A. That had to do with the appropriate assessment of trauma survivors, I believe, from a counseling perspective, or how a counselor might best interview people in a way that was ethical and effective. And I think those are the two additions.

Q. Okay. Thank you.

A. Sure.

Q. Now in preparation for – let me strike that. When were you first contacted to possibly work on Mr. Thompson's federal habeas case?

A. I think it was near the end of July of 1998. Perhaps August.

Q. So either July or August of last year?

[7] A. Either the end of July or the beginning of August of 1998.

Q. And who first contacted you?

A. Mr. Chavis did on behalf of Mr. Kissinger for the Federal Defender Services office.

Q. And what was the nature of that first contact? Was it simply to determine your availability to possibly assist in the case?

A. Mr. Chavis asked me about my availability and asked if I would be willing to perform a psychological evaluation to assess what Mr. Thompson's psychological condition might have been like at the time of the offense in 1985, to assess whether it was possible to make such an appraisal, to see whether there were factors in his personal background that might have been investigated at

the time of trial that would have had bearing on his psychological status at the time of the offense, and Mr. Chavis also suggested that they wanted to know something about Mr. Thompson's current psychological state, his level of functioning at the present time.

Q. Were you also asked if you would be able to determine his competency at the time of his criminal trial in 1985?

A. That was not an initial question, no.

Q. Was it a subsequent question?

[8] A. It became a question because Mr. Thompson's psychological state deteriorated very, very quickly at a point a few months after my initial meeting with him. At that point, there was a question about whether he would be able to proceed with the psychological evaluation, and I was asked to come and observe him and make some kind of determination about whether he was competent to proceed.

Q. In these habeas proceedings, correct?

A. That's correct.

Q. Did Mr. Chavis express to you any opinion as to what he thought Mr. Thompson's psychological condition was, his mental status was, at the time of the offense?

A. The only opinion that he expressed to me was that he thought that he was not in good shape, that he had deteriorated. He didn't label it in any particular way. Said he didn't think that he was doing as well.

Q. When you say he didn't label it, does that mean he didn't use any diagnostic categories, say out of the DSM-IV?

A. Exactly.

Q. Now after your initial contact with Mr. Chavis, did you accept being retained by them on this case, or did you have subsequent discussions in that regard?

A. I think the next conversation was simply a logistical conversation planning my first trip.

[9] Q. And after the initial series of factors or items that Mr. Chavis detailed for you that they wanted you to assess, was that amended any?

A. I need to ask you to tell me what you mean.

Q. Sure. You said that you were asked to determine Mr. Thompson's mental status at or about the time of the offense, if it was possible to make that appraisal, and then his current competency. Have you been asked subsequent to that to render any other expert opinions in this matter?

A. Only what I said to you just a minute ago in terms of his competence to proceed with the appellate process. I don't think I've yet been asked to assess his competence at the time of the offense. I don't think that's ever been a question.

Q. Do you know how you came to be recommended to the federal public defender in Knoxville to participate in this case?

A. I don't.

Q. Have you ever worked for Mr. Kissinger before?

A. I don't think so. I don't know all of the attorney pairings in the state of Florida for the capital collateral representative. I know that Mr. Kissinger, although I didn't know him then, worked there at some point, and it's possible that he was attached to one of [10] the cases that I worked on.

Q. How about Ms. Dana Hansen? Have you ever been employed by her?

A. I don't think so.

Q. You said that you have a clinical practice, correct?

A. That's correct.

Q. And you also do forensic work, obviously, since you're here today?

A. Yes.

Q. How much of your practice percentage-wise is forensic work? Can you give me an estimate?

A. At this point in my practice, maybe 20 or 25 percent.

Q. And the balance, 75 to 80 percent, being clinical, is that correct?

A. Yes.

Q. Of your forensic work, can you give me a breakdown, percentage-wise, civil cases versus criminal cases? And when I say "civil," I mean, you know, family law matters, personal injury matters, things of that nature.

A. I think that, along that dichotomy, probably half and half criminal versus civil cases as you've described them. I think that's probably about right.

[11] Q. Now out of the criminal cases, what percentage of the time have you testified for the defense versus the State?

A. A lot of the time when I do an evaluation, either for the State or for the defense, I don't wind up testifying, so it's a little hard to describe it quite that way.

Q. Explain to me basically how that works out for you.

A. Okay. I may be called upon either to supervise an evaluation that goes on in my office by another psychologist on our forensic team. I may be called upon to do an evaluation in a criminal situation. Sometimes what I discover in the evaluation is helpful to the attorney who's asked me to do the evaluation. Often I only know that by whether I'm called to testify later in the case, assuming that there is a trial and there is testimony. Some percentage of cases will come to a settlement arrangement or a plea arrangement. Some percentage of cases, because I'm in a supervisory capacity, I won't wind up testifying at all.

Q. Approximately how many capital cases have you been consulted on in the course of your practice?

A. In the course of my practice. Maybe 75, maybe 80.

[12] Q. And capital cases out of which states?

A. North Carolina, Utah, South Carolina, Florida, Virginia. And I guess this counts as a capital case, even though it's a post-conviction case, right?

Q. That's correct.

A. So Tennessee.

Q. I meant to include collateral cases, either post-conviction or federal habeas among those capital, so does that bring in any other states besides the five that you listed?

A. I don't think so. I think that's all.

Q. Out of the 75 to 80 capital cases where you have been consulted, how many of those, roughly, have you given testimony in court?

A. In total I'm going to say maybe 25 or 30.

Q. And would the testimony that you gave in capital cases be in those five states that you've listed for me, North Carolina, Florida, Utah, South Carolina, and Virginia?

A. I don't think that I've testified in Utah. And I was called to testify in Virginia and then declined to testify, so that I may or may not have a record of appearing as a witness in that state. I'm not sure.

Q. In all the capital cases where you've been consulted, has it been for the State or for the defense?

[13] A. They've all been for the defense.

Q. All for the defense. And so none of them would be like a court-appointed expert? You were perhaps paid through court funds but working for the defense in all those cases? I mean, you weren't like an amicus to the court in any of these?

A. No. In fact, North Carolina doesn't often operate on that kind of system, but most of the payment has come through court funds as you described just a minute ago.

Q. Because most of the defendants were indigent?

A. Yes. That's correct.

Q. Obviously, in the states where you've testified you have been declared an expert, correct?

A. Yes.

Q. What federal jurisdictions have you been declared an expert in?

A. I don't know if I know.

Q. As best you can recall.

A. I think the only federal case that I testified in that fits into the category we're talking about is a North Carolina case, a Charlotte case.

Q. Would that be in the Western District of North Carolina?

A. Sounds right to me.

[14] Q. All right. Now a Dr. Barry Crown has also been retained to work on behalf of Mr. Thompson in this case. Are you familiar with Dr. Crown?

A. I am.

Q. How is it you know of Dr. Crown?

A. I've never met Dr. Crown. I hear that he and I have appeared in the same hallway, although we're excluded from speaking to one another or even knowing

one another. I'm not sure what he looks like. But I think there have been several cases, some that I know about and some that I don't, on which he's also been called in to prepare an opinion of some kind.

Q. So you've never directly consulted with Dr. Crown on a capital case?

A. That's not true. We have had probably a total of four, maybe five, telephone conversations where we've talked briefly about some of those cases. I just don't know what other cases there are.

Q. Have you had conversations with Dr. Crown about this case?

A. Yes, I have.

Q. And the nature of those conversations?

A. Because I was doing only a part of the psychological testing, having been told by Mr. Chavis that the neuropsychological and intellectual assessment [15] would be done by Dr. Crown, I needed to check with Dr. Crown about his test results so that I could include them as part of my opinion, part of my work. In that kind of situation, I have the permission of the attorney to make that kind of consultative phone call, and so we did talk about Mr. Thompson.

Q. Did you provide information to Dr. Crown about your testing and evaluation of Mr. Thompson as well?

A. I did not.

Q. Anything about any diagnoses you may have reached?

A. No. I don't think I provided him with any diagnostic information at all.

Q. Do you know Dr. Theodore Blau?

A. No, I don't.

Q. Do you know of him?

A. Yes.

Q. Obviously, you are a psychologist, you're not a medical doctor, correct?

A. That's correct.

Q. Do you have a law degree, a juris doctor or something else like that?

A. No, I don't.

Q. You're not authorized to prescribe medications, correct?

[16] A. No. In North Carolina, psychologists don't prescribe medications. In some states they do.

Q. As part of your training, have you had any training regarding psychotropic medications and their effects?

A. Yes.

Q. What sort of training is that?

A. I have had both graduate school training about the effects of medications and the various types of medications and postgraduate seminar education about that matter.

Q. Various workshops that you've attended, for example?

A. Yes.

Q. You're not a neurologist, correct?

A. No, I'm not.

Q. What sort of neurological training have you had?

A. Almost none. That's why always in an assessment where a neuropsychological question comes in I will request the assistance of a neuropsychologist.

Q. In performing the evaluations that have been requested of you on Mr. Thompson's behalf, you've reviewed various documents?

A. Yes.

[17] Q. You have provided me with a three-page, approximately three-page document, two and a half pages, of – says documents reviewed as of 7/22/99?

A. That's correct.

Q. As you sit here today, to the best of your knowledge, this is a complete listing of all the documents that you have reviewed?

A. To the best of my knowledge, every single document that I have reviewed is listed on these three pages.

MR. PRUDEN: If I could, I'd like to make that the next exhibit to the deposition.

MR. KISSINGER: No objection.

(Exhibit No. 3 was marked for identification.)

BY MR. PRUDEN:

Q. Are there any other materials, outside of documents, that you've reviewed as part of your process of evaluating Mr. Thompson, for example, audio tapes, videotapes?

A. No. There are no tapes of any kind relating to this case that I have reviewed. The other material would be my own assessment notes from my clinical interviews with Mr. Thompson, notes that I made during my interviews with collateral witnesses, the psychological testing data that I collected.

[18] Q. Any other materials –

A. I think that's it.

Q. – that have not been listed as documents? Okay. The clinical notes and notes from your interviews with collateral witnesses and the psychological test data, those are items on the subpoena. Have you already forwarded those materials to Dr. Blau?

MR. KISSINGER: I don't think they have been forwarded as of this very moment, but they will be sent off immediately following the deposition.

MR. PRUDEN: And you'll provide us with an inventory of what's being sent?

MR. KISSINGER: Absolutely.

MR. PRUDEN: Do you have Dr. Blau's address?

MR. KISSINGER: I have it.

(Off-the-record discussion.)

BY MR. PRUDEN:

Q. How many times have you actually seen Mr. Thompson?

A. I've seen him three times.

Q. Can you please tell me when those three times were?

A. I can. The first time I met with him was on August 20th of 1998, and I spent about four hours with him at that time. I then saw him on the 2nd of February, [19] 1999, and spent about two and a half or three hours with him, perhaps almost four hours with him. And again on the 7th of April of 1999 for about an hour, hour and a half.

Q. Let's take these in order. What exactly was the purpose of your visit with Mr. Thompson on the 20th of August, 1998?

A. The purpose of my initial visit was to address the four questions that I mentioned at first, to assess Mr. Thompson's current psychological status, to assess Mr. Thompson's likely psychological status and mental state before and surrounding the time of the 1985 offense, and to assess social, environmental, psychological, and economic factors in his life that might have been considered to be mitigating in nature at the time of his trial in 1985.

Q. And how did you go about this on the 20th of August, 1998?

A. Prior to that date, I had received some records from the Federal Defender's office, and I reviewed those records to establish that Mr. Thompson had a reading level that was adequate to allow the administration of

certain psychological tests. My procedure is, prior, to the initial interview, to do very limited record review so that I go into the first interview with an objective [20] mind. So basically what I knew about him at that point was the crime which he had been convicted of, the date of the offense, and what his educational background and reading level were. I also knew that psychological testing had been administered to him in a variety of settings prior to my going in. At that point, I went in with just the Minnesota Multiphasic Personality Inventory for that first date.

Q. Is that the MMPI-2?

A. Exactly. And I spent two and a half of the four hours with him conducting the clinical interview, and about 90 minutes of that time was spent for Mr. Thompson to self-administer the MMPI following my instructions and direction.

Q. That's in addition to the two-and-a-half-hour interview?

A. That's correct.

Q. And that time again was?

A. About four hours.

Q. I'm sorry. No. For the MMPI.

A. About 90 minutes, about an hour and a half.

Q. What did you assess Mr. Thompson's reading level at prior to going in?

A. I didn't assess his reading level. It had been assessed as above eighth grade, which is the required [21] reading level for the proper administration of the MMPI-2.

Q. And the notes of the clinical interview on that date are among the materials you'll be forwarding to Dr. Blau, correct?

A. Yes. That's correct.

Q. As well as the raw data of the MMPI?

A. Yes.

Q. Will that raw data indicate what scoring programs you've used on the MMPI?

A. Yes.

Q. Were you able to validly administer an MMPI to Mr. Thompson –

A. Yes, I was.

Q. – at that time?

A. At that time.

Q. And there were no other standard tests used by people in your profession that you administered on that date?

A. No. Most of the testing had already been completed by Dr. Crown by the time I saw Mr. Thompson for the first time, although I was not aware of any of the results of that testing.

Q. Did you discuss with Mr. Thompson the facts and circumstances of the crime for which he stands convicted [22] and sentenced to death during your interview of him?

A. Yes.

Q. How did you discuss them with him? Did you ask him questions or detailed questions, Dr. Sultan, or did you just ask him an open-ended question?

A. I would have had to ask him some open-ended questions, because I didn't know the details, so – I hadn't read any factual basis of the crime. That meeting was my first look at Mr. Thompson and my wanting to see how he presented himself without a lot of particular provocation from me, so that, because I was to have a lengthy time to interview him – although it turned out not to be the case, at the time I thought I was going to – that interview, I think, would be described as quite open-ended, basically me asking him to tell me about himself, about what aspects of his growing-up years he wanted to talk about.

I asked follow-up questions when he would bring a topic up. He answered a general question about the offense, and then I would ask some follow-up questions about that as well.

Q. Do you have your notes of that interview here with you to refer to?

A. I don't. They're packaged up for Dr. Blau.

Q. Did you write down every fact that Mr. Thompson [23] told you about his recollection of the murder of Ms. Lane on your notes?

A. I don't recall specifically, but my best guess would be that, while there's some factual material about the offense itself, my notes are much more likely to reflect his psychological state at the time and what he recalled about how he felt and what he was experiencing and what the other people around him seemed to be experiencing through his observation. So I'm sure there's

factual information, but I hesitate to tell you that every single detail that he suggested to me wound up in those notes.

Q. What did Mr. Thompson tell you about the offense, as best you can recall?

A. As best I recall, Mr. Thompson talked about his relationship with the young girl that he was with for the days and weeks prior to this.

Q. Joanne McNamara?

A. Yes. And how he felt a tremendous need to protect her. He fancied himself rather as a rescuer of young women, and this part of the story came about in his description of other circumstances in which he had provided assistance to damsels in distress. Joanne McNamara was the last in a line of young girls that Mr. Thompson viewed himself as taking under his wing. He [24] was quite disturbed about her circumstances.

What he told me was that they were thrown out of the place that they had been staying when, it was discovered that they were not in fact married. I don't know who it was who portrayed them as a married couple to the people that they were staying with, but that the truth of it was discovered, that someone contacted Joanne McNamara's mother – or parents, I don't know which; I think mother – to let her know that this child was in her home, the person they were staying with, that Mr. Thompson forced the victim in this case into her car at knifepoint.

Mr. Thompson was not sure whether he precisely recalled that he killed Ms. Lane – is that correct?

Q. That's correct.

A. Okay. But that he knew that he had in fact killed her.

Q. I'm sorry. Would you say that again for me?

A. I'll do my very best. He was not sure – and I asked him this specifically – whether he was recalling the events from his own memory or from having heard the recitation of the facts and a reminder of his own statement to the police over the years. At this point in time, we're about 14½ years after the event.

He wasn't claiming in any way not to remember, [25] simply was unable to make distinctions for me about which memories were specifically his and which he had read and heard about in the course of his case and had heard discussed about him. And, of course, there had been post-conviction hearings and, by then, Supreme Court decisions, and so the facts had been recited many, many times. I was not clear precisely how clear his recollection was at the end of that first interview. That was one of my issues to revisit at a later time.

Q. Does he have any recollection of actually stabbing Ms. Lane?

A. He said he wasn't sure. That was really the issue that we talked about. He said that he knew he had talked about it at some point, and he had been told he talked about it at some point, but that his emotional state at the time was pretty disrupted and aroused. At some point during that conversation Mr. Thompson began to show a lot of agitation and anxiety, kept expressing a willingness to talk, but it was clear that in remembering there was a lot of pain for him, and he expressed a great deal of remorse to me about the occurrence of the offense. Said that

he had no real understanding even after all this time about how he could have been capable of such a thing. It was not characteristic of him, according to him, for him to be assaultive in that way. [26] Said that he had never killed anyone before and that he didn't have any reason to hurt Ms. Lane. Said that it haunted him.

Q. Now were there any visible signs you observed of this anxiety and disturbance?

A. Easier to demonstrate than to talk about verbally, so I'll do that and see if I can describe what I'm doing.

Q. Okay, and if you'll do it and maybe –

A. Narrate it at the same time.

Q. Okay.

A. Okay. When Mr. Thompson becomes agitated, he rocks back and forth in his chair, does what I've heard referred to as pill-rolling, finger rolling with both hands, rubbed his face a lot with his hands, used the same phrases over and over again, and then became what a psychologist or psychiatrist might refer to as tangential, would begin to talk about different subjects and then bring himself back to the subjects at hand, or I might direct him back to the subject at hand.

At some point he began to talk to me – and I don't know that it was connected specifically to talk about the offense, so I want to be careful to say that to you – but at some point during the interview he began to tell me that he had written all of the songs on the radio [27] that I ever listened to, and he began to tell not just me that, but any guard that wandered by in the hallway, tell himself that, told me that again and again. I disagreed with him at first

to see what would happen, and he was quite secure in that belief and wasn't agitated by the fact that I challenged him. He just thought I was silly. And I think that probably would be my interpretation of agitation. Because it was the first time I saw him, I don't know if the belief system that I was hearing about that seemed so odd was connected to agitation or simply a part of what he was like, and so I made some note about that but didn't attach any particular significance to it at that time.

Q. What was his reaction when you expressed disbelief about his writing the songs?

A. He told me I was silly and patted my hand.

Q. If I understood your comments correctly, he would start out basically on point as he was talking to you about various aspects of the crime or the issues that you were talking about, and then he would become tangential, correct? Or did he start out tangential at some points and then focus back in on what he was talking about?

A. Focusing I think is an overstatement in my event. I don't think that he ever was really focused.

[28] Q. Why?

A. Having only seen him that one time in a relatively coherent state, I don't know what he's like when his medication is properly regulated and he's at his best, but Mr. Thompson in general rambled. His general style of verbiage was what we would call a little loose in association. Something would remind him of something else, and he would begin talking about that before he finished talking about what he started out talking about. Was tangential in the sense that whatever associations he made in his mind that most of us would keep to ourselves

we all do them, we just don't all say them – he would then say whatever it was that occurred to him. I didn't do any particular kind of redirecting to see how focused he could become. I simply redirected as I needed to to get a general sense of the way his thought process was working.

Q. Would you describe Mr. Thompson as being self-reflective during your initial interview with him?

A. No.

Q. The reason I asked that was you did state that he was talking about how he felt about the crime.

A. The word "reflective" means to me a more intellectual process.

Q. All right.

[29] A. He emoted a great deal. He reflected very little. Insight, which is an intellectual kind of exercise really, almost an academic, removed exercise, is not something Mr. Thompson has very much of I don't think. He reacts very strongly emotionally, and sometimes out of control emotionally, but I don't think I'd categorize that as reflective. He was deeply hurt and deeply upset by his own behavior, became tearful, rocked a great deal back and forth in his chair, did the hand gestures that I talked about, but did he reflect upon it and describe it to me objectively? I don't think so.

Q. Was it Mr. Thompson's becoming tearful that led you to conclude that there was remorse and that alone?

A. No. I think the content of his verbalizations was pretty clear as well. I don't know what's wrong with me; how could I have done that; how could I be a beast; why

was I a beast; what was I thinking; how could this happen; should never have happened; I t ink about her all the time; she deserved to have a life. With or without the emotion attached, the content I think is pretty clear.

Q. Was this in response to any specific question by you as to why he did this crime, or was this just part of his gene-al rambling to you or discussion?

[30] A. I don't think I would have asked Mr. Thompson why he committed the offense during my first meeting with him. I think he pretty much just chose the way he wanted to talk about it.

Q. You said that he described Joanne McNamara as the last in a long line of young women or damsels in distress that he was rescuing?

A. Actually, I think I described it that way.

Q. All right.

A. I don't think that's a label he would have used. Again, that indicates a whole lot of self-reflection. He simply told me about other girls that he had helped.

Q. Were you able to verify that there were other young women he was able to help besides Ms. McNamara?

A. I don't know if I'm able to do that. I haven't done that.

Q. Have you asked Mr. Kissinger or Mr. Chavis to try and verify that for you?

A. No, but it's a very interesting idea.

Q. Did you ask him how he felt he was helping these young women?

A. Yes, I did.

Q. What was his response?

A. He protected them.

[31] Q. From?

A. Enemies.

Q. Was he more specific?

A. Different situations, different enemies. Joanne McNamara's case, her mother was the enemy. Evil men in her mother's home were the enemy. Her mother wanting her to prostitute. In a situation that he was describing to me in Hawaii – no, maybe it was a situation that took place before he was transferred to Hawaii. In the service, he rescued two teenage runaway girls, put them up in his barracks. They came from, according to him, abusive, violent homes, the enemy being their family – their families.

Q. Did he ever tell you that instead of rescuing young women that he assisted young men?

A. Never. I don't think so, no.

Q. Did you talk with him at all about his girlfriend Arlene during this first visit?

A. A little bit, yes.

Q. Did you bring up the topic or did he?

A. I don't remember.

Q. What do you recall was said about her and his relationship with her?

A. That he loved her very much, that he knew her for a long period of time, that they lived together when [32] he was in Hawaii, that he wasn't good enough for her.

Q. Did he say why he was not good enough for her?

A. I don't recall that he did specifically, no.

Q. And you didn't ask him?

A. I don't think so.

Q. You administered the MMPI-2 to Mr. Thompson. He willingly took the test?

A. He did.

Q. As you observed him, did he have any difficulty reading the test and taking it on his own?

A. He didn't have any difficulty reading it. He required a fair amount of supervision to take it.

Q. Can you elaborate on that for me, please, the supervision that was required?

A. I'll describe the level of supervision as unusual statistically, in terms of the number of MMPIs that I've helped to administer over the years.

Mr. Thompson read some of the items aloud to me and then made rhyming sounds to some of the words. Some of the items struck him as particularly amusing, and he would laugh out loud, and I would laugh with him and suggest to him that he get back to what he was doing. It didn't wind up taking him – part of how I suspected he might be of normal intelligence is that it didn't take him much longer than the average person who does it without the [33] distractions. He asked a few questions about the

interpretations but took my direction when I suggested to him that he was the one who needed to make the interpretation.

Q. So by and large Mr. Thompson had no apparent difficulty comprehending the questions or interpreting them?

A. I don't believe so, and the scoring of the test doesn't reflect any difficulty with comprehension.

Q. So you never reached a point where you had to read questions to him because he was unable to read them and understand them?

A. No.

Q. Is there anything else that occurred during this first visit, this four-hour visit with Mr. Thompson, that we haven't discussed?

A. I think we have hit the high points.

Q. Did you talk with anyone else at the prison concerning Mr. Thompson during that first visit when you were out there at River Bend, or was your time at River Bend solely limited to dealing with Mr. Thompson?

A. During that first time, my time was limited solely to him.

Q. On the 2nd of February this year, you said that you spent between two and a half and three hours out at [34] the prison?

A. I did.

Q. And what happened during your visit? What did you do during your visit to the prison on 2 February, '99?

A. I think the answer to the question of what I did is that I observed Mr. Thompson. I observed Mr. Thompson in interaction with me, and I observed Mr. Thompson in interaction with prison officials, and I observed Mr. Thompson in interaction primarily with Mr. Chavis.

Q. Where did you make these observations?

A. We were in one room the entire time.

Mr. Chavis entered that room with me. It's a small room, kind of a cell-sized room. In fact, I think it is a cell.

Q. A visitor's room?

A. It's used as a visitor's room, but I don't – I don't think that it has the amenities of a typical visitor's room. There is a table in there, but I think it really is a cell that's set aside in the high-security area of that prison in which he could be observed from three sides, so part of what I got to observe was Mr. Thompson's reaction to the people who were observing him. It was a lot like being in a fish bowl.

[35] Q. And the reason you went out there on the 2nd of February was why?

A. It was about time for me to go back and continue my evaluation, but prior to me planning that trip specifically, using Mr. Chavis as my contact person for the logistics, Mr. Chavis asked me if I might come and observe him. He called me at some point a week or so before the time of my visit and said what I said to you earlier, which is that he was concerned about him and thought that he wasn't doing very well and asked if I would come and look at him.

Q. What did you observe about Mr. Thompson on this visit?

A. Mr. Thompson was in terrible psychological condition. I'll describe his physical appearance first. Mr. Thompson was physically filthy. His body stank, stank to the point where I could smell him before I could see him enter the room. He looked disheveled. He came into the room wearing a dirty rag wrapped around his head. He was highly agitated, quite angry during much of the visit, sometimes threateningly so.

Q. Toward you?

A. Not toward anyone in particular. He alternated between being absolutely silent and speaking in great gushes of words, streams of words. Mr. Thompson appeared [36] to be in a great deal of psychological discomfort. He was not having the sort of psychotic episode where someone is comfortable being crazy. He was apparently quite tortured.

Mr. Thompson spoke in what could be described clinically as word salad at times, where words were strung together that had nothing to do with one another. His answers to questions didn't appear, on the surface at least, to have anything to do with the questions.

Mr. Thompson didn't know who I was. Did not know that he was living in a prison unit, thought that he was living on a slave ship.

And there are psychologists and psychiatrists who believe in the symbolic level of speech of that nature, so I hesitate to say to you that he was not able to communicate anything. Perhaps it is that I was not able to understand much of what he was trying to tell me.

But he told stories that had to do with his enslavement and with his suffocation and with the fact that he was being destroyed by an unknown tormenter, although he knew it, he just couldn't tell me who it was or what it was.

That alternated with talk about how he was the god of the world and the king of the world and that he had seen heaven and that he had the power to set himself [37] free and to get us all out of the slave ship that we were living in or that we were on.

At some points he was able to say who I was in terms of knowing that I was a psychologist. At other points he told me that I was one of his vessels, one of his servants. At some point he became quite angry. Sometimes he would get very, very angry, and I was unable to detect anything external that had caused whatever the verbal eruption was.

He was kept in hand shackles as well as leg shackles during that visit and sometimes appeared very uncomfortable in them and other times seemed to be unaware that he was in them. He tried to leave the interview room – stated some intention to leave the interview room maybe a dozen times and was distracted by myself or Mr. Chavis into continuing conversation.

After about an hour and a half, he allowed Mr. Chavis to leave the room. At first he was afraid of me. He told me that I was evil and that I was there to kill him. At some point it was all right for Mr. Chavis to leave, and, in fact, it became very important for Mr. Chavis to leave. So he dismissed Mr. Chavis, and Mr. Chavis left.

Q. You say it became important. Important to him, or did he say it was important or did you judge it to be [38] important?

A. He said. He directed it in some way. I'm not sure exactly what he said. Mr. Chavis asked permission to leave at some point and was told no. At that point it was okay for him to leave. Mr. Thompson seemed to be reacting very, very, very strongly to even casual observation on the part of the guards. Because of his high level of agitation, and later as I became aware, because the guards were very concerned about him and the state he was in, there were more than the usual number of people around I think, and Mr. Thompson was aware that he was being observed more closely and yelled things at the guards and pounded his hands sometimes on the table and got up from his chair and moved his body around.

At some point he was willing to remove the rag he was wearing on his head, but I think that took almost two hours. And our interview terminated when Mr. Thompson decided that I could save him if I would allow him to kiss my hand, and when I refused, he became very angry, stood up, turned his back on me, and told me to leave. Didn't use the word "leave" but said you're not here anymore.

When the guards, four guards, came in to assist Mr. Thompson in returning to his cell, whether intentionally or not, they wound up placing me between [39] them and Mr. Thompson. Mr. Thompson was extremely angry with the guards. I don't know why. They didn't know why. They were trying to talk with him about it. Didn't want to go back into his cell block the way they wanted him to, said that that was the incorrect door. Kept insisting that he

come out the door that the guards were standing in front of, the door that I was supposed to leave by.

I actually requested that the guards move me from between them, because I was concerned that there was going to be some sort of physical altercation at that point. They were as well. I was – Mr. Thompson's a lot taller than I am. With the thrashing around that he was doing – they weren't physically struggling at this point; he was thrashing around himself – I was afraid that he was going to actually hit me with his head. He was rocking his head back and forth.

Q. Gesticulating too?

A. To the extent that he could –

Q. That he could with the shackles?

A. – with his hands shackled. In fact, I think they were on a waist band too, because I remember noticing his head moving much more than his hands. If he'd been waiving [sic] his hands in my face, I would have noticed.

[40] The guard then spent about ten minutes, maybe a little bit less, with me, then, in the hallway and Mr. Thompson in that same room I was telling you about with all four guards around him with them talking very quietly and patiently to him. There was one man in particular that he seemed to be comforted by, and this man spoke very quietly to him in his ear about that it would be okay and he could go back to his cell now and he wouldn't let anything bad happen to him and although Mr. Thompson continued to curse, the volume of his emotionality came down, and that guard led the procession of people out the back door of that room back towards the cell block.

At that point, after they had him back in his cell, they actually brought him back to me.

Mr. Thompson – I thought this was really quite dignified behavior on the part of the custody officers.

Mr. Thompson was apparently in a room in which he was not allowed to have paper or pencils or any object at all, but he had been telling me for those two and a half or three hours by that point that he had some documents that he needed me to take to his lawyer for him. Sometimes they were a secret code or a map to a gold mine. Sometimes those documents came up as his salvation. But the guards actually led him back to his cell to let him [41] look for those documents, and then they led him back into the room so that he could tell me from the doorway that they had been stolen.

Q. So he never delivered any of these documents to you?

A. There weren't any such documents.

Q. Okay,

A. And the guards assured me that there had not been any documents stolen, that in fact he was not able to have anything with him and hadn't for some time so that there wasn't anything missing from his cell.

Q. Were you able to carry on any sort of a conversation with Mr. Thompson during this visit?

A. I think that depends a lot on what you think a conversation is. We were not conversing as you and I are. Words were being exchanged back and forth, and at some point he thought that we were making contact, because he

appeared to be pleased when he was talking to me or when he was talking to Mr. Chavis. He didn't say anything that made any sense to me particularly.

Q. And after they took Mr. Thompson away, you didn't see him again on that date?

A. No, I didn't.

Q. Did you, subsequent to Mr. Thompson being taken away, talk with any of the guards?

[42] A. I did. Two in particular.

Q. Okay.

A. I don't know their names.

Q. What was the nature of those conversations? Before you answer that, Doctor, did you make any notes about those conversations with the guards?

A. I did, as soon as I left the prison as a matter of fact. And I in fact had to make notes about that interview after I left Mr. Thompson's presence, because part of what he did – and I neglected to tell you this earlier – is that he studied very carefully every single pen mark that I made on my paper, took the pad out of my hand, made his own notations on the pad, read words out loud, made up different words, told me to write down various words and spelled them for me.

Q. Are those notations that he made on your pad part of the documents that are being forwarded to Dr. Blau?

A. They are.

Q. What did you discuss with the correctional officers?

A. I was very alarmed by the condition that I saw Mr. Thompson in. When I had seen Mr. Thompson about five and a half months before that – no, I guess maybe not quite that long, about five months before that – he was [43] in a much, much better psychological state.

The level of anguish and disorientation and confusion and anxiety that he was living in was very alarming to me, and I asked the correctional officers who came back to talk to me how long he had looked like that, I asked them what they thought about what was happening to him. They indicated to me that they didn't understand why he had been allowed to get into that kind of psychological position. They thought of him as a mental health inmate. They thought he had longstanding psychological problems, according to their report. They talked to me about the fact that there was a unit either at that prison or somewhere nearby for severely mentally ill inmates, and they both expressed the belief that Mr. Thompson needed to be housed there.

One, at least, of them had known him for many years and said he had never been as bad – in his words, as bad as he had been in the last several weeks, and they indicated to me that some custody officers had been relaying information about his psychiatric condition to the contract people who were mental health service providers for the prison unit and that it didn't seem that much was being done.

Q. Are the names of those correctional officers with whom you spoke in your notes?

[44] A. They're not. I was upset enough and physically a bit intimidated by the interaction I just had with Mr. Thompson that I didn't look at their name tags. When I left, I immediately called Mr. Chavis and described what I could remember about their physical appearance and asked him to identify them.

Q. Was Mr. Chavis able to identify them?

A. I don't know.

Q. He's never gotten back to you on that point?

A. No, he has not.

Q. Did you make any attempt to talk to the prison mental health personnel after this episode with Mr. Thompson on the 2nd of February, on that particular date, before leaving the prison?

A. What I did was talk to Mr. Kissinger seeking permission of some kind from him about how to pursue communication of the kind you're describing. He suggested to me that he didn't think it was appropriate at that point for me to directly contact the prison personnel unless I thought Mr. Thompson's life was in danger – in which case I wouldn't have asked his permission, I just would have told him that's what I needed to do – and he said that he would communicate it in whatever way he saw appropriate.

Q. Had you planned to do any testing of [45] Mr. Thompson when you went out there on the 2nd of February?

A. No.

Q. I guess that brings us to April 7th.

A. Yes.

Q. What happened, then, on that date?

A. I was scheduled to appear at a hearing that I don't really understand the nature of exactly, so I can't tell you what it really is legally, but there was some kind of hearing in which the issue of his competence to proceed in his appeals was going to be discussed.

Q. That's okay. Mr. Kissinger and I know what the hearing was supposed to be, so you just tell me what it was that happened out there, and I think we'll be fine.

A. Okay. I showed up at whatever city it was in the night before the hearing, and I had asked to speak with Mr. Thompson, because present competence is such a fluid condition. Mr. Kissinger and I both met with Mr. Thompson together – he and I sat side-by-side with Mr. Thompson across the table – and I talked to Mr. Thompson, and I thought that probably within the legal definition of competence to proceed as Mr. Kissinger explained it to me, at the time that I met with him, he probably met that definition. He probably met that standard for competence.

[46] Q. What sort of things did you talk about with Mr. Thompson?

A. To describe it as talking about with is probably not an accurate characterization. Mr. Thompson was very angry with me. He did not want to talk with me.

Q. Was that how he expressed his anger, simply I don't want to talk with you, or were there other signs of anger directed toward you?

A. Very, very, very rapid clipped speech about how he didn't know why we had to meet, didn't want to meet, the sort of tone of voice I'm using right now. Very clipped, very rapid. He had met a good doctor; he had already talked to a good doctor; why was I there; could I leave him alone; he didn't want to talk about it again; he didn't want to tell me whether he knew where he was; he knew lawyers were representing him; he knew lawyers were trying to kill him; he knew he was in a jail; couldn't I see the bars; was I blind; you know, obviously there were bars.

Some of what he said wasn't coherent, but when I asked him pointed questions about his legal circumstances and about the function of the court, he answered those questions, not directly exactly, but let me know that he understood. He didn't seem to understand that the doctor that he liked so much had been sent there [47] by the State.

Q. Dr. Blau you mean?

A. Yes.

A. According to Mr. Thompson, the man who came to see him was going to save him and quite a wonderful fellow and looking out for his best interests and couldn't I just go away. Said they made contact. They had very good harmony. They had a good – I think connection is the word that he used. That it had been a significant meeting and that I ought to consult with the doctor if I wanted to learn something. He was quite a learned man and a good man, unlike the person I was.

At some point he knew who Mr. Chavis was, said some angry things about him. At some point he wasn't sure who Mr. Chavis was. But he knew that Mr. Kissinger was his

lawyer each time I asked him. And so he tolerated my presence for about 45 minutes, maybe an hour.

Q. Was he angry toward Mr. Kissinger?

A. I – my interpretation is that he was angry with Mr. Kissinger for bringing me into the room. He thought Mr. Kissinger was doing kind of a crappy job and told him that he wished he would just get some money so he could get a decent lawyer, but he said that Mr. Kissinger hadn't been horrible exactly so far, right [48] at that point, and although he would become free when Mr. Kissinger raised funds for his release, he knew that he was stuck with Mr. Kissinger for at least the next few days, which said to me he knew who Mr. Kissinger was. When I asked him if Mr. Kissinger was actually a fund raiser or whether he was a lawyer, he said he was a lawyer, so – but he wasn't really happy with anybody in the room.

He told me actually that he – I asked him when the last time was he had a bath because he looked like he had showered, and, in fact, whoever was the chief custody officer – I think it might have been a captain – Mr. Kissinger and I were in his office waiting for Mr. Thompson to be brought to whatever room we were going to be allowed to sit in, and he mentioned to us in passing that Mr. Thompson had eaten his dinner or had eaten something and had bathed.

When I asked Mr. Thompson when he bathed, he told me it had been months. When I asked him if he didn't remember taking a shower, he became very angry with me, so I didn't know whether he was angry because he didn't want to talk about taking a shower or because he didn't remember taking a shower.

Q. On 2 February did you ever ask him about his hygiene or lack thereof?

[49] A. Did I ask him? I must have, because he told me that he didn't like water. I told him he stank, so that doesn't qualify as asking, but I think we had those two exchanges at least.

Q. Were you able to elicit from him why he allowed his personal hygiene to deteriorate at that point in time?

A. Can't, can't, can't. Afraid, afraid, afraid.

Q. Of water, water, water?

A. Yes.

Q. Okay. Did you administer any tests to Mr. Thompson on 7 April '99?

A. No.

Q. Do you intend to administer any other tests to Mr. Thompson between now and the evidentiary hearing in September of this year?

A. I don't think so.

Q. You had to think for a moment about that.

A. Well, it would be very interesting and maybe clinically interesting. That's what I have to decide about, maybe if it would be clinically significant to do some projective psychological testing with him. The judgment that I'll make is whether it's likely to be so stressful for Mr. Thompson that the stress would outweigh whatever possible gains there might be.

[50] I'm also not at all sure that I'm going to be able to complete my evaluation by September, because if Mr. Thompson's condition is not improved beyond what I saw the last time I visited with him, I'm not sure how one might do that.

Q. And that last time would be 7 April, correct?

A. Yes.

Q. What tests, as we sit here today, do you think you would perhaps like to administer to further assist you in completing your evaluation of Mr. Thompson?

A. If I administered any further tests, I think that I would like to administer the thematic and perception test that Dr. Copple administered to him in the early 1990s. I thought the results that he obtained at that time were quite interesting, and it would be interesting to see how that had changed over time.

Q. Any others?

A. None that I can think of. He's been given quite a large number of tests by all the psychologists who've had their hands on him over the last year.

Q. What remains to be done so that you can complete your evaluation of Mr. Thompson?

A. Are you asking me about the ideal world or the world of what minimum could I survive with in order to be secure about my opinions?

[51] Q. Why don't you give me both?

A. Okay. In the ideal world, I would have two or more further opportunities to spend time talking with Mr.

Thompson about his life and to be able to review with him information about his family life and his economic circumstances that has been revealed to me through other sources.

Typically I'm in a position where it's the individual him or herself who might be revealing those circumstances to me first, and then I might be seeking collateral information to substantiate. In this case, I don't have any of that information from Mr. Thompson and all of it from other people, so it would be very helpful to know, when confronted with the facts as they have been told to me, whether Mr. Thompson could let me know something about how that affected him emotionally.

That would let me be able to have opinions beyond simply what psychologists and psychiatrists know to be true statistically in certain circumstances. Then I would be able to know that that was true for Mr. Thompson as well.

Q. And minimally? I'm sorry. Are you through telling me what you need for the ideal world?

A. One more thing I think in the ideal world. I think I would like to speak with another relative or two.

[52] Q. Have you spoken to some relatives?

A. I have. This family has been able to help me understand a great deal of the early dynamics of Mr. Thompson's life, and, because he's such a poor historian – even was during the first visit – collateral witnesses in this case are quite important because, unlike how Mr. Thompson's been portrayed by Dr. Blau, Mr. Thompson's very reluctant to talk about whatever level of disability or illness or suffering he might have experienced, and

although we did talk about some of the same events in his family life that later I talked about with his grandmother and his sister, he certainly minimized the damage to him of those circumstances.

Q. Have you had a social history prepared on Mr. Thompson?

A. Not a formal social history, no.

Q. Do you intend to have one?

A. No, not at this time. I don't.

Q. I take it there has been no prior social history done on him that you've been provided. Am I correct in assuming that?

A. I think I have been provided it as part of the prison records. I mean, I think that there are social histories that are part of various evaluations that have [53] been done on him in the past. I don't know how formalized they are, but certainly there was some information about his family.

Q. You state that you've talked with his grandmother?

A. Yes.

Q. When was that?

A. Yesterday.

Q. First time?

A. First time.

Q. And his sister?

A. His sister, Nora Wharton.

Q. W-a-r-t-o-n?

A. W-h-a-r-t-o-n.

Q. And when did you talk with her?

A. Yesterday as well.

Q. First time?

A. Yes.

Q. Have you talked with any other family members about Mr. Thompson's background?

A. No.

Q. Have you attempted to talk with his brother?

A. His older brother, Curtis, is the person I was referring to earlier, and I did attempt to call his house at one point last night, and he was not at home.

[54] Q. Have you attempted to talk with any of Mr. Thompson's schoolteachers or school administrators?

A. No. I have, however, reviewed a large number of depositions and pieces of testimony that are those people that you're describing right now.

Q. Neighbors from when he was growing up, have you talked with any of them?

A. No, I have not.

Q. Just reviewed any testimony perhaps from them?

A. Yes. That's correct.

Q. Have you seen the – says here extract of Mr. Thompson's Navy records taken from trial counsel's file, post-conviction hearing Exhibit 3. That does not include the actual transcript of his court-martial, does it? Have you reviewed the transcript of his court-martial, called the record of trial?

A. I'm trying to think if the actual transcript is in there. I think that in that exhibit is a summary of the transcript, a factual finding. I don't know if I have – yeah, I think I have seen the testimony of at least some of the witnesses, so it may be that the answer to your question is yes and I don't know.

Q. Or perhaps it's just the summary of the testimony of the witnesses?

A. Perhaps it is, but I don't think so.

[55] Q. The record of trial, I believe, would be this size document (indicating), and it's about ¾ to an inch thick I believe.

A. I think that is part of the packet that I received.

Q. Have you attempted to contact any of his supervisors in the military?

A. No.

Q. Have you talked with his former girlfriend, Arlene?

A. Cajulao. No, I did not. I actually interviewed Mr. Chavis, who spent – let me see if it was three or four days – with her. It looks like from July 29th through August 2nd of last year, 1998, interviewing her in Honolulu, Hawaii. Mr. Chavis and I have talked about the content of

his interviews with Ms. Cajulao on several occasions over the last several months.

Q. Did you find her observations of Mr. Thompson beneficial to you?

A. I did.

Q. Basically what about her observations was beneficial? What points did she bring out that you find important in reaching your diagnosis?

A. Ms. Cajulao described to Mr. Chavis that during [56] the course of the four-year relationship she had with Mr. Thompson, Mr. Thompson became increasingly bizarre in behavior that he exhibited. There were a number of occasions in which there were incidents that took place in the military that he described to her as him having been attacked. The facts of the situation may in fact not be that, but that was his description to her, that he was being picked on, that he was being bullied, that he was being attacked.

He became depressed, according to her, over time and increasingly paranoid. At some point she would come home from work, and he would be in their home with the curtains drawn, standing by himself in the dark telling her that people were after him and that he didn't want people to be able to look at him through the windows. She remembers being quite concerned about his behavior.

There are a couple of situations that she described to Mr. Chavis in which, with no external provocation that she could identify, Mr. Thompson became quite violent with her, and she saw those behaviors as very unusual for him and reported to Mr. Chavis that Mr. Thompson seemed unaware of what had provoked it and didn't even seem

after the fact to remember what had taken place, would simply, after a period of time, [57] calm himself down and return to normal behavior. I found all of that quite significant.

Q. How did he become violent with her?

A. There's one episode described in which they're in the kitchen cooking dinner or cleaning up the dishes, and he actually threatened her with a knife. He told her that he was going to kill her.

Q. Any other specific violent episodes related to you?

A. There's an incident in which I believe he struck her.

Q. With his fist or with an object?

A. With some part of his body. I think he may have grabbed her around the neck.

Q. Do you know whether or not she ever reported any of these assaults on her?

A. I don't know.

Q. How was this information conveyed to you? Was this a written statement that Mr. Chavis had taken from Ms. Cajulao? Is that how you pronounce it?

A. Cajulao is what he tells me.

Q. Cajulao.

A. Yes.

Q. Was this a written statement, or are these Mr. Chavis's notes that you have relied on?

[58] A. They're his notes I've relied on. It's an oral report that he made to me, and I've made some notes of that report.

Q. So he did not actually give you his notes?

A. That's correct.

Q. The notes that you made, are they among the materials that are going to Dr. Blau?

A. Yes.

Q. Have you talked with Mr. Thompson's trial attorneys in this matter?

A. I have not.

Q. Do you intend to?

A. Again, it's a wonderful idea. That might be a really significant source of information. In reality, in the duration of an evaluation, anyone who can provide me with information about Mr. Thompson increases the depth of my understanding of him, and so that would be a very nice thing.

Q. What about his post-conviction attorneys?

A. My opinion about that is exactly the same.

Q. Have you talked to them?

A. No, I have not talked to them.

Q. Have you talked to any other custodial officers out at River Bend other than the two that you mentioned you spoke to on 2 February of this year?

[59] A. Not about Mr. Thompson, no.

Q. You've talked to other custodial officers simply about getting in and out of the prison? Administrative type things?

A. Sometimes I've talked to them about whether they like their jobs, or they wanted to know what work was like in North Carolina, so it might be that kind of conversation.

Q. Since I just received this report at the outset of the deposition, I haven't really had a chance to go through it. Is this a preliminary report, then, since you haven't completed your evaluation?

A. It's somewhere between a preliminary report and an amended report and amendments that will be attached to it. Let me say it better than that. I think that I have enough information about Mr. Thompson so that I am comfortable with the opinions that I suggest, that I make in this document. I think that as additional information is forthcoming it will add to the depth and the complexity of my understanding.

MR. PRUDEN: I think at this time what I'd like to do is, since I've had you talking for over an hour now, why don't we go ahead and take a break for maybe about 15 minutes or so, and that'll give me an opportunity to take a look at the report, and that might [60] expedite things.

(Recess from 2:35 p.m. to 2:48 p.m.)

BY MR. PRUDEN:

Q. What indicates to you or what indicia are there for you that suggest Mr. Thompson was displaying

significant signs of mental illness from the time he was a small child? How do you arrive at that conclusion?

A. During my interview with Mr. Thompson's sister – and let me say all of her names – Ms. Nora Jean Hall Wharton, Ms. Wharton spontaneously began to talk to me about Mr. Thompson's behavior in the time period immediately following their mother's death.

By the time of the first grade, Mr. Thompson, when he was being yelled at by his grandmother, she was reportedly verbally abusive in the following fashion: She would yell at him you have the devil in you, boy. She would then observe Mr. Thompson standing or sitting beside a wall repeatedly banging his head into the wall. She, in her role as protector of him, would ask him what was going on, and he would tell her he was trying to knock the devil out of his head. She recalls at the time, although she was quite young herself, being worried about his behavior and thinking of it as very odd.

One of the things that we know about people who develop thought disorders is that frequently in childhood [61] you'll see one or more peculiarities in behavior. This would certainly fit in that category. She recalls other instances.

Q. Sort of a self-punishment or a self-exorcism type thing?

A. A self-injurious behavior is what we would call it I think. Mr. Thompson, when he was Greg, in the first and second and third grade had rather frequent hysterical crying episodes in classrooms that Ms. Wharton recalls also as very unusual in the context of his schoolroom situation. She describes him as being the subject of

torment on the part of the students because he behaved in an odd fashion. Sometimes he would simply begin to cry and wail and scream and apparently made a sound like a fire engine when he was sobbing and developed the nickname Fire Engine. That's reported in the trial transcript. She told me much more detail about actually the extent of those kind of emotional outbursts.

At home it was rather common for Mr. Thompson to begin to cry and scream during times when Ms. Wharton herself was being beaten by their grandmother. Ms. Wharton was the victim of physical abuse on the part of the grandmother. Mr. Thompson observed much of this since they were together virtually all of the time, and Nora Wharton was not really permitted much interaction [62] outside of their home.

Q. Did Ms. Wharton tell you how she was beaten?

A. Yes. She was beaten with what she referred to as a tennis shoe on one occasion.

Q. Like a sneaker?

A. Yes. In the street in front of the neighbors, beaten to the point where she had to be assisted in walking home afterwards. She was beaten with an electrical cord at some point. Mr. Thompson observed both of those beatings and became hysterical.

She recalled another episode during which her biological father was brutally beating and raping their mother on the floor in front of them when the children were quite small, perhaps Mr. Thompson was himself three or four. She was maybe four or five. Mr. Thompson's reaction to that was to stand and scream and scream and scream and scream during the entire episode.

Any of the – taking the self-injury aside, setting that aside, any one of those behaviors in isolation might not be particularly significant. Putting them together, we begin to see a pattern of intense emotional reactivity.

Q. So basically, if I understand it, it's the self-injurious behavior and the crying and the way you see him reacting to these physical abuses of others?

[63] A. Yes.

Q. And that is indicative of a sign of mental illness to you? I just want to make sure that I'm understanding what you're telling me. If I'm not, please explain it to me.

A. I think I understand your question. It is an early indicator of a problem that's likely to develop. With the benefit of hindsight, it takes on the significance of a precursor, because then we see the escalating pattern of dysfunction and abnormality.

Q. Sort of a causal relationship is what you're seeing developing?

A. I'm not sure what causes what. There are often early indices of later mental illnesses that you don't know exactly what it's going to look like later, but you realize in looking at the child that there's a high likelihood that something is not going to be right when that person achieves maturity.

Q. Because of the environment, for example, in which he's growing up?

A. Perhaps. Perhaps because of the genetics involved. Perhaps because of the situations he's exposed to, as you said, the environment. Perhaps because of

whatever factors there are. Perhaps nutrition plays a role in this. These children were without food for [64] significant periods of time as well. I don't know all of the reasons, but what I know is that if you look back in the childhood of this man, the beginnings of mental illness are apparent.

Q. Besides Ms. Wharton's report of lack of food, have you seen any evidence that the children were taken away because of malnutrition?

A. No. Ms. Wharton did tell me, however, that there was a neighbor who had planned to make a report to Social Services, so perhaps I'll have the opportunity to interview that neighbor as well.

Q. And is there authority in terms of – strike that. You don't know to what degree the children were malnourished then?

A. No, I don't know. I do know that – and this is confirmed by the grandmother – in the six weeks approximately following their mother's death, the children were left alone virtually all of the time because Ms. Lamar was drunk and in bed, and so we have a five, a six, and a seven-year-old child in a house with no food. They would occasionally steal money from underneath her mattress while she was sleeping, and one of them would go to the store to try to find some food. Occasionally a neighbor would provide them with a meal or a can of food. I don't know whether they were [65] malnourished over an extended period of time. I do know that there is, from Ms. Wharton's perspective, rather serious psychological damage from that time.

Q. You have no medical documentation showing any malnourished condition or that it's caused some problem with his brain, do you?

A. I don't. These children were never taken to the doctor, so there wouldn't be any medical documentation. There's probably documentation in the school system. According to Ms. Wharton, Ms. Lamar was so drunk at the beginning of the school year following their mother's death that she forgot to sign the children up for lunches at school. They didn't have anything to eat during the day, so they forged her signature on a permission slip so that they could eat. They were discovered and punished by the school superintendent people, and a form was sent home to Ms. Lamar. She then signed it, and the children were able to eat lunch after that point. A couple weeks passed for all of that to get straightened out.

Ms. Wharton has undergone a lot of therapy in recent years and says that she's now able to describe situations that she wasn't very comfortable acknowledging to herself, these being one of them.

Q. Your diagnosis for Mr. Thompson is [66] schizoaffective disorder, comma, bipolar type. What leads you to that diagnosis from what you've reviewed and your testing results?

A. What leads me to the diagnosis is that there is a long history, perhaps at this point almost a 20-year history, of simultaneous thought disorder on the part of Mr. Thompson documented throughout all the records, and affective disorder, emotional disorder, being unable to regulate his emotions, sometimes falling into the pits of despair and becoming suicidal, sometimes becoming highly agitated and manic and having too much energy, too much

exuberance, and grandiose thinking. The thought disorder is manifested in persecutory ideas, delusions of grandeur – lots of different kinds of delusions actually – auditory hallucinations that he sometimes admits to, sometimes suspected by the doctors who are doing the examination.

The psychological testing early on in Mr. Thompson's incarceration confirm the presence of a psychotic process. There was an MMPI administered to him by a prison psychologist in 1990 that is described as valid and indicative of psychotic process, and throughout the prison record he receives a variety of diagnoses that take into account both thought disorder and affective illness.

[66] The very best diagnosis to describe all of the complex of symptoms that I just talked to you about is schizoaffective disorder, bipolar type.

Q. You note in your report Mr. Thompson was observed having a significant change in behavior after he was discharged from the Navy. What significance do you attach to that fact?

A. Well, it's interesting, because the state Court of Appeals actually notes this, that prior to his entry into the military Mr. Thompson is described almost uniformly – well, in fact, uniformly according to their opinion – as passive, as compliant, as eager to please, as gentle, as timid, as eager to run from attacks.

At some point – and we don't know, because I haven't seen any psychiatric records from the military at this point; I don't know if there are any – we don't know whether or not the change in Mr. Thompson is perceived as other than behavioral disruption, but, in fact, his description of that time is that he began to notice that

people were trying to hurt him all the time, that officers and other people of his rank and slightly above his rank attempted to provoke him, that they sometimes physically assaulted him, that he thought he was being followed a lot, and that he sometimes struck out in what he thought was defense and then later found [68] out from other people who he knew and trusted that there wasn't anything to defend against or that there might not have been anything to defend against.

Q. This is what he related to you during your interview last August?

A. Right. The people who saw him after the military each were struck by how very different he seemed. That was the word that kept being used, "different." Sometimes the people I was speaking to were not able to describe what different meant, but, for example, the grandmother said that he was different as in not right, that he wasn't himself. Ms. Wharton tells me that the grandmother was very well aware that he was in deep psychological distress, and, in fact, the grandmother suggested that he be taken to the psychiatric unit at Grady Hospital in Atlanta, I believe, for treatment. The grandmother observed him staring off into space for long periods of time. She observed him mumbling to himself. When she asked him what he was doing, he told her he had no idea what she was talking about. She said that was very different from the boy who left her to go into service.

The sister has even a better glimpse of him than that, because he actually went to live with her for a while, and she said he was bizarre. She described him [69] as paranoid. She said that he would explode for no reason at all, that she was afraid of him for the very first time in her

life, that they had always been terribly close, the sort of close where if there was only one piece of bread to eat they would share it, that they always looked out for one another, and that suddenly he was behaving in ways that she simply could not identify. She described three very serious episodes of aggression and emotional upset that she said are what led her to approach her grandmother about what to do for treatment for him.

Q. Did they ever attempt to get treatment for him?

A. No, they did not.

Q. And did they say why?

A. No. Ms. Wharton did not say why. She said that she felt greatly guilty about that.

Q. You state that the schizoaffective disorder, bipolar type, would substantially impair Mr. Thompson's ability to conform his conduct to the requirements of the law. How so?

A. There are points in time when Mr. Thompson is out of contact with reality. He is responding to situations that simply don't exist or that he perceives in extremely exaggerated or different form. A person is not able to conform one's conduct to the law if you are [70] frankly delusional or hallucinating in some way. Mr. Thompson over the years has had both of those symptoms.

Q. So it's this delusional aspect of this disorder that is the main factor that would keep him from having the ability to conform his conduct to the requirements of law, if I understand you correctly?

A. Is it the main factor? Let me say that I think it's at least as potent a factor if not more as the other aspect of his mental illness, which is that he has emotional disregulation.

Q. Meaning?

A. Meaning Mr. Thompson often is not in control of his emotions. He has episodes of rage, of aggression, that he doesn't understand or relate to very well. He's told about them later. Sometimes he remembers them, sometimes he doesn't. He is often embarrassed about his behavior afterwards, but there are points at which I believe he's not in control of what he's doing.

Q. When you say "he's not in control of what he's doing," are you saying that it's impulsive behavior?

A. If I am emotionally disregulated, if I'm overaroused and overreactive and I operate out of a faulty belief system, so that not only do I have the impulse to do things that I ordinarily wouldn't, but I [71] also think things are going on that aren't, I have a combination in which yes, I suppose you could call it impulse, but you also have to take the notion into account that it might be an impulse to do something that doesn't make any sense.

Q. Does this disorder prevent Mr. Thompson from planning his activities?

A. Sometimes, yes, it does.

Q. And so the inability to plan, would that be a factor that would prevent him from conforming his conduct to the requirements of the law?

A. If that were in operation at some time. In the history of the Department of Corrections' mental health records, when he's properly medicated I don't think that's true about him.

Q. Is it your professional opinion, then, that when he is medicated he has the ability to plan, but when he is not medicated he does not always have the ability to plan?

A. Those two things are true. It's also true that if he's inadequately medicated or improperly medicated he doesn't have the ability to plan anything. I don't know whether he has impulses. I think he's all impulse, so to have impulses implies that there's a part of you that's not impulsive. For example, when Mr. Chavis and I saw [72] him during my second interview with him, he could not have planned anything at all, not beyond the nanosecond in which he was experiencing the world. But he was receiving psychotropic medications at the time, so that's why I have to put that qualifier in there.

Q. What evidence prior to his incarceration do you have that Mr. Thompson was hallucinating or suffered hallucinations – excuse me, experienced hallucinations?

A. Well, the evidence of hallucinations is an interesting thing since the only way that we know if somebody is hallucinating is if they tell us. If you're asking me if there's documentation, the answer is no, because Mr. Thompson never was taken for treatment as best I know. He doesn't remember, at least according to his report to me, whether he received any treatment in the military. He remembers being told that he needed treatment in the military, and he remembers that he thought he wanted to see a psychiatrist in the military. He cannot remember if he actually ever saw such a doctor. It's possible that there

are records that exist that will have exactly the evidence that you're talking about, but I haven't seen them.

Q. Have you attempted to obtain his military medical records?

A. Do you mean have I asked Mr. Chavis to get [73] those for me? Yeah, I have. I don't know what they'll show. I rather suspect that Mr. Thompson never received any medical treatment of a psychiatric nature in the military. He didn't like to tell anyone about what was happening to him. The evidence that I have has to do with the reports of people who observed him, who observed him moving his lips and talking when there wasn't anyone present, that being his grandmother.

Q. And this is after his return, correct?

A. Yes. And I have Mr. Thompson's report. He wasn't happy to talk about it is my opinion, but he acknowledged to me that it's possible that when he thought he was being followed while he was in the military that maybe there wasn't anyone there. And when he saw people looking in his window, which would qualify as hallucination, it's possible that there wasn't anyone there looking at him either.

Q. Do you know if Mr. Thompson has filed any kind of claim with the Veterans Administration for his condition while in the military?

A. I don't have any idea.

Q. Any other evidence in the record prior to his incarceration that would be indicative to you that he was experiencing hallucinations –

A. No.

Q. [74] – other than his self-report?

A. And the report of the sister and his grandmother. Are we talking about just documents?

Q. Yes.

A. No. No documents.

Q. Or any other reports from other individuals?

A. Not at this time, no.

Q. Bear with me for just a minute, please.

A. Sure.

Q. You're familiar are [sic] the term malingering?

A. I am.

Q. What steps during your evaluation process have you undertaken to determine whether or not Mr. Thompson might be malingering?

A. The MMPI-2 has several scales that are set aside to elicit the possibility of trying to portray one's self in an inaccurate manner. Mr. Thompson performed within normal levels on all the validity scales. Dr. Blau gave Mr. Thompson several measures of malingering, and he scored within normal limits on all of those. There are normal test results found within the prison records, and I have my almost 20 years as a clinical psychologist with which to make clinical judgments.

MR. PRUDEN: I believe that's all the questions [75] I have. Steve?

MR. KISSINGER: None.

(Signature reserved.)

(Whereupon, at 3:16 p.m., the taking of the instant deposition ceased.)

_____
Signature of the Witness

SUBSCRIBED and SWORN TO before me this ___ day of ___, 19__.

_____
NOTARY PUBLIC

My commission expires: _____

[76] ERRATA SHEET

RE: GREGORY THOMPSON v. RICKY BELL, WARDEN

DEPOSITION OF: FAYE E. SULTAN, PH.D.

Please read this original deposition with care, and if you find any corrections or changes you wish made, list them by page and line number below. DO NOT WRITE IN THE DEPOSITION ITSELF. Return the deposition to this office after it is signed. We would appreciate your prompt attention to this matter.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

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[78] CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA)
COUNTY OF CABARRUS)

I, Dayna H. Lowe, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto,

nor financially or otherwise interested in the outcome of the action.

/s/ Dayna H. Lowe
DAYNA H. LOWE
Court Reporter
Notary Public in and for
County of Cabarrus
State of North Carolina

My commission expires July 22, 2002.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at WINCHESTER

GREGORY THOMPSON, *Petitioner*, v. RICKY BELL, WARDEN, Riverbend Maximum Security Institution, *Respondent*.	)	No. 4:98-cv-006 *Edgar*

ORDER

(Filed Feb. 17, 2000)

For the reasons expressed in the Court's memorandum filed herewith, it is hereby **ORDERED** that the respondent's motion for summary judgment (Court File No. 7) is **GRANTED**. The petition (Court File No. 3) of Gregory Thompson for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED**.

Additionally, the Court has reviewed this case pursuant to 28 U.S.C. § 1915(a)(3) and Rule 24 of the FEDERAL RULES OF APPELLATE PROCEDURE and hereby **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. Therefore, any application by Thompson for leave to proceed *in forma pauperis* on appeal is **DENIED**. 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24.

If any appeal is taken from this action, such notice will be treated as an application for a certificate of appealability, which is hereby **DENIED** since Thompson has failed to make a substantial showing of the denial of a

constitutional right. 28 U.S.C. § 2253(c)(2); Rule 22(b) of the FEDERAL RULES OF APPELLATE PROCEDURE.

The petitioner's execution was previously stayed pending further orders of this Court. The **STAY WILL REMAIN IN EFFECT** pending any appeal.

It is **SO ORDERED**.

ENTER:

/s/ R. Allan Edgar
R. ALLAN EDGAR
CHIEF UNITED STATES
DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 00-5516

GREGORY THOMPSON,
Petitioner-Appellant,

v.

RICKY BELL, Warden,
Respondent-Appellee.

Before: SUHRHEINRICH, MOORE, and CLAY, Circuit Judges.

JUDGMENT

(Filed Jan. 9, 2003)

On Appeal from the United States District Court
for the Eastern District of Tennessee at Chattanooga.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

December 1, 2003

Ms. Jennifer L. Smith
Assistant Attorney General
PO Box 20707
Nashville, TN 37202-0207

Re: Gregory Thompson
v. Ricky Bill, Warden
No. 03-5759

Dear Ms. Smith:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

January 20, 2004

Ms. Jennifer L. Smith
Assistant Attorney General
PO Box 20707
Nashville, TN 37202-0207

Re: Gregory Thompson
v. Ricky Bill, Warden
No. 03-5759

Dear Ms. Smith:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

January 7, 2005

Ms. Jennifer L. Smith
Associate Deputy Attorney General
PO Box 20207
Nashville, TN 37202-0207

Re: Ricky Bell, Warden
v. Gregory Thompson
No. 04-514

Dear Ms. Smith:

The Court today entered the following order in the above-entitled case:

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is granted limited to Question two presented by the petition.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk